

Comment Info: =====

General Comment: Thank you for revising the H2A regulations.

The motivation for hiring illegal workers is reduced financial costs. Specifically, the IRS Tax Guide for Small Business outlines that Farms and Construction companies can employ day laborers (contractors) and not withhold income taxes and payroll taxes. To make the H2A program attractive, it should conform with the IRS guidelines and practices for Farms and Construction companies. The H2A program should also allow a contractor arrangement in lieu of an employee arrangement. Specifically, the H2A program presently requires employment with tax filing and reporting and, thus, is around a 30% cost penalty from this requirement alone. Unless and until the Internal Revenue Service chooses to detect and prosecute tax evasion by illegal aliens or change their code and practices for Farms and Construction companies then no business owner with any financial acumen will use the H2A program. The H2A program should conform with current IRS practices of allowing a contractor arrangement.

How can you effect adoption of the H2A program instead of the illegal worker practice? One idea is to include a \$500 per application funding for detection and prosecution and make it 200% refundable. The most effective way this would work is establish a penalty for employing illegal aliens. The penalty would be 10% payable to the private individual or company identifying and documenting the illegal worker, and 10% payable back into the H2A program to remunerate those who paid the \$500 fee. In this way, an incentive would exist to hire H2A workers instead of illegal workers.

To date, the Department of Labor has chosen not to enforce the labor laws regarding H2A workers. This is understandable. My knowledge is they are overwhelmed with illegal transactions in the million dollar plus range and do not even have the human power to investigate fraud in the \$50,000 range; so, issues in the one to a few dollar an hour range seem insignificant; yet, when multiplied by an estimated 14 million workers these become very sizable. I believe no government agency is enforcing the laws regarding taxation and immigration and unless these issues are addressed by your regulations then you are simply created a legal trap and a non-functional program.

To date, the Immigration and Naturalization Service has ignored illegal aliens. They have a well-documented history of ignoring illegal practices in other visa areas as well such as in L2 visas. An upper end estimate places the net cost per illegal alien family at \$10,000 per family. This is a cost to American taxpayers of over \$30B per annum even estimating four persons per family. One argument is the third generation of these families will positively contribute to the USA tax base but common sense and observation show many illegal workers send their earnings back to Mexico or other countries and are not building a base in the USA. In fact, the #2 import for Mexico is dollars from the USA.

In short, I believe a lot more thought should be put in to actually enforcing this visa practice. Nobody is going to use it if it costs more as the current laws plain out are not enforced by any agency of the US government. For instance, the revised regulation loads down the small business owner with a requirement for Workers Compensation payments. States already have guidelines for this and the federal government does not need to over-ride these. Equally against this requirement is the fact illegal workers are paid as contractors so no insurance requirements apply. The Federal Government already has numerous laws with respect to illegal (and legal) immigrant workers but chooses not to enforce these. Enacting more laws and regulations should only be done if enforcement will be enacted as well.

Thank you for your consideration and work on this very, very important issue.